

HOUSE BILL 11

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2021

INTRODUCED BY

Dayan Hochman-Vigil and Doreen Y. Gallegos

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO MEDICAL MALPRACTICE; MODIFYING SJC → ~~THE DEFINITION OF "INDEPENDENT PROVIDER"; LIMITING THE APPLICABILITY OF LAWS 2021, CHAPTER 16, SECTION 3 FOR CERTAIN OUTPATIENT HEALTH CARE FACILITIES~~ ← SJC SJC → DEFINITIONS IN THE MEDICAL MALPRACTICE ACT; RAISING PERSONAL LIABILITY AND RECOVERY CAPS; REPEALING LAWS 2021, CHAPTER 16, SECTIONS 1 AND 3 ← SJC; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SJC → ~~SECTION 1. Section 41-5-3 NMSA 1978 (being Laws~~

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~~1976, Chapter 2, Section 3, as amended) is amended to read:~~

~~"41-5-3. DEFINITIONS.--As used in the Medical Malpractice~~

~~Act:~~

~~A. "advisory board" means the patient's
compensation fund advisory board;~~

~~B. "fund" means the patient's compensation fund;~~

~~C. "health care provider" means a person,
corporation, organization, facility or institution licensed or
certified by this state to provide health care or professional
services as a doctor of medicine, hospital, outpatient health
care facility, doctor of osteopathy, chiropractor, podiatrist,
nurse anesthetist, physician's assistant, certified nurse
practitioner, clinical nurse specialist or certified nurse-
midwife or a business entity that is organized, incorporated or
formed pursuant to the laws of New Mexico that provides health
care services primarily through natural persons identified in
this subsection;~~

~~D. "hospital" means a facility licensed as a
hospital in this state that offers in-patient services, nursing
or overnight care on a twenty-four-hour basis for diagnosing,
treating and providing medical, psychological or surgical care
for three or more separate persons who have a physical or
mental illness, disease, injury or a rehabilitative condition
or are pregnant and may offer emergency services. "Hospital"~~

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~~includes a hospital's parent corporation, subsidiary corporations or affiliates if incorporated or registered in New Mexico; employees and locum tenens providing services at the hospital; and agency nurses providing services at the hospital;~~

~~E. "independent provider" means a doctor of medicine, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, physician's assistant, certified nurse practitioner, clinical nurse specialist or certified nurse-midwife who is not an employee [or not an agent] of a hospital or outpatient health care facility. "Independent provider" includes a business entity that is not a hospital or outpatient health care facility that employs or consists of members who are licensed or certified as doctors of medicine, doctors of osteopathy, chiropractors, podiatrists, nurse anesthetists, physician's assistants, certified nurse practitioners, clinical nurse specialists or certified nurse-midwives and the business entity's employees;~~

~~F. "insurer" means an insurance company engaged in writing health care provider malpractice liability insurance in this state;~~

~~G. "malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care that~~

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~~proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance;~~

~~H. "medical care and related benefits" means all reasonable medical, surgical, physical rehabilitation and custodial services and includes drugs, prosthetic devices and other similar materials reasonably necessary in the provision of such services;~~

~~I. "occurrence" means all injuries to a patient caused by health care providers' successive acts or omissions that combined concurrently to create a malpractice claim;~~

~~J. "outpatient health care facility" means an entity that is licensed pursuant to the Public Health Act as an outpatient facility, including ambulatory surgical centers, free-standing emergency rooms, urgent care clinics, acute care centers and intermediate care facilities and includes a facility's employees, locum tenens providers and agency nurses providing services at the facility. "Outpatient health care facility" does not include independent providers;~~

~~K. "patient" means a natural person who received or~~

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~~should have received health care from a health care provider under a contract, express or implied; and~~

~~L. "superintendent" means the superintendent of insurance."~~

~~SECTION 2. TEMPORARY PROVISION--OUTPATIENT HEALTH CARE FACILITIES--LIMITATION ON RECOVERY.--From January 1, 2022 to July 1, SJC→Hf11→2023←Hf11 Hf11→2024←Hf11←SJC SJC→2023←SJC, except for punitive damages and past and future medical care and related benefits, the aggregate dollar amount recoverable by all persons for or arising from an injury or death to a patient as a result of malpractice shall not exceed seven hundred fifty thousand dollars (\$750,000) per occurrence for claims brought against an outpatient health care facility, not including outpatient health care facilities majority-owned and -controlled by a hospital, if the injury occurred in that time period. The aggregate dollar amount includes payment to a person for any number of loss of consortium claims or other claims per occurrence that arise solely because of the injuries or death of the patient. In jury cases, the jury shall not be given any instructions dealing with this limitation.~~

~~SECTION 3. APPLICABILITY.--The provisions of Laws 2021, Chapter 16, Section 3 apply to outpatient health care facilities described in Section 2 of this act on and after July 1, SJC→Hf11→2023←Hf11 Hf11→2024←Hf11←SJC SJC→2023←SJC.←SJC~~

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SJC→SECTION 1. Section 41-5-3 NMSA 1978 (being Laws

1976, Chapter 2, Section 3, as amended) is amended to read:

"41-5-3. DEFINITIONS.--As used in the Medical Malpractice

Act:

A. "advisory board" means the patient's compensation fund advisory board;

B. "fund" means the patient's compensation fund;

~~[A.]~~ C. "health care provider" means a person, corporation, organization, facility or institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, [ø] physician's assistant, certified nurse practitioner, clinical nurse specialist or certified nurse-midwife or a business entity that is organized, incorporated or formed pursuant to the laws of New Mexico that provides health care services primarily through natural persons identified in this subsection;

D. "hospital" means a facility licensed as a hospital in this state that offers in-patient services, nursing or overnight care on a twenty-four-hour basis for diagnosing, treating and providing medical, psychological or surgical care for three or more separate persons who have a physical or mental illness, disease, injury or rehabilitative condition or

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are pregnant and may offer emergency services. "Hospital" includes a hospital's parent corporation, subsidiary corporations or affiliates if incorporated or registered in New Mexico; employees and locum tenens providing services at the hospital; and agency nurses providing services at the hospital;

E. "independent provider" means a doctor of medicine, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, physician's assistant, certified nurse practitioner, clinical nurse specialist or certified nurse-midwife who is not an employee of a hospital or outpatient health care facility. "Independent provider" includes a business entity that is not a hospital or outpatient health care facility that employs or consists of members who are licensed or certified as doctors of medicine, doctors of osteopathy, chiropractors, podiatrists, nurse anesthetists, physician's assistants, certified nurse practitioners, clinical nurse specialists or certified nurse-midwives and the business entity's employees;

[B-] F. "insurer" means an insurance company engaged in writing health care provider malpractice liability insurance in this state;

[G-] G. "malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed

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departure from accepted standards of health care [which] that proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance;

[D.] H. "medical care and related benefits" means all reasonable medical, surgical, physical rehabilitation and custodial services and includes drugs, prosthetic devices and other similar materials reasonably necessary in the provision of such services;

I. "occurrence" means all injuries to a patient caused by health care providers' successive acts or omissions that combined concurrently to create a malpractice claim;

J. "outpatient health care facility" means an entity that is licensed pursuant to the Public Health Act as an outpatient facility, including ambulatory surgical centers, free-standing emergency rooms, urgent care clinics, acute care centers and intermediate care facilities and includes a facility's employees, locum tenens providers and agency nurses providing services at the facility. "Outpatient health care facility" does not include independent providers;

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~~[E-]~~ K. "patient" means a natural person who received or should have received health care from a ~~[licensed]~~ health care provider, under a contract, express or implied; and

~~[F-]~~ L. "superintendent" means the superintendent of insurance ~~[of this state]."~~

SECTION 2. Section 41-5-6 NMSA 1978 (being Laws 1992, Chapter 33, Section 4) is amended to read:

"41-5-6. LIMITATION OF RECOVERY.--

A. Except for punitive damages and past and future medical care and related benefits, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed six hundred thousand dollars (\$600,000) per occurrence for malpractice claims brought against health care providers if the injury or death occurred prior to January 1, 2022. In jury cases, the jury shall not be given any instructions dealing with this limitation.

~~[B. The value of accrued medical care and related benefits shall not be subject to the six hundred thousand dollar (\$600,000) limitation.]~~

B. Except for punitive damages and past and future medical care and related benefits, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed

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seven hundred fifty thousand dollars (\$750,000) per occurrence for malpractice claims against independent providers; provided that, beginning January 1, 2023, the per occurrence limit on recovery shall be adjusted annually by the consumer price index for all urban consumers.

C. In calendar year 2022 and subsequent calendar years, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care and related benefits, shall not exceed the following amounts for claims brought against an outpatient health care facility that is not majority-owned and -controlled by a hospital:

(1) for an injury or death that occurred in calendar years 2022 and 2023, seven hundred fifty thousand dollars (\$750,000) per occurrence;

(2) for an injury or death that occurred in calendar year 2024, five million dollars (\$5,000,000) per occurrence;

(3) for an injury or death that occurred in calendar year 2025, five million five hundred thousand dollars (\$5,500,000) per occurrence;

(4) for an injury or death that occurred in calendar year 2026, six million dollars (\$6,000,000) per

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occurrence; and

(5) for an injury or death that occurred in calendar year 2027 and each calendar year thereafter, the amount provided in Paragraph (4) of this subsection, adjusted annually by the consumer price index for all urban consumers, per occurrence.

D. In calendar year 2022 and subsequent calendar years, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care and related benefits, shall not exceed the following amounts for claims brought against a hospital or an outpatient health care facility that is majority-owned and -controlled by a hospital:

(1) for an injury or death that occurred in calendar year 2022, four million dollars (\$4,000,000) per occurrence;

(2) for an injury or death that occurred in calendar year 2023, four million five hundred thousand dollars (\$4,500,000) per occurrence;

(3) for an injury or death that occurred in calendar year 2024, five million dollars (\$5,000,000) per occurrence;

(4) for an injury or death that occurred in

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calendar year 2025, five million five hundred thousand dollars (\$5,500,000) per occurrence;

(5) for an injury or death that occurred in calendar year 2026, six million dollars (\$6,000,000) per occurrence; and

(6) for an injury or death that occurred in calendar year 2027 and each calendar year thereafter, the amount provided in Paragraph (5) of this subsection, adjusted annually by the consumer price index for all urban consumers, per occurrence.

E. The aggregate dollar amounts provided in Subsections B through D of this section include payment to any person for any number of loss of consortium claims or other claims per occurrence that arise solely because of the injuries or death of the patient.

F. In jury cases, the jury shall not be given any instructions dealing with the limitations provided in this section.

~~[G.—Monetary damages]~~ G. The value of accrued medical care and related benefits shall not be [awarded for future medical expenses in malpractice claims] subject to any limitation.

~~[D-]~~ H. A health care provider's personal liability is limited to [two hundred thousand dollars (\$200,000)] two

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hundred fifty thousand dollars (\$250,000) for monetary damages and medical care and related benefits as provided in Section 41-5-7 NMSA 1978. Any amount due from a judgment or settlement in excess of [two hundred thousand dollars (\$200,000)] two hundred fifty thousand dollars (\$250,000) shall be paid from the [patient's compensation] fund, except as provided in [Section 41-5-25 NMSA 1978.

E. For the purposes of Subsections A and B of this section, the six hundred thousand dollar (\$600,000) aggregate amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall apply only to malpractice occurring on or after April 1, 1995] Subsection I of this section.

I. Until January 1, 2027, amounts due from a judgment or settlement against a hospital or outpatient health care facility in excess of seven hundred fifty thousand dollars (\$750,000), excluding past and future medical expenses, shall be paid by the hospital or outpatient health care facility and not by the fund. Beginning January 1, 2027, amounts due from a judgment or settlement against a hospital or outpatient health care facility shall not be paid from the fund.

J. The term "occurrence" shall not be construed in such a way as to limit recovery to only one maximum statutory payment if separate acts or omissions cause additional or

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enhanced injury or harm as a result of the separate acts or omissions. A patient who suffers two or more distinct injuries as a result of two or more different acts or omissions that occur at different times by one or more health care providers is entitled to up to the maximum statutory recovery for each injury."

SECTION 3. REPEAL.--Laws 2021, Chapter 16, Sections 1 and 3 are repealed.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2022.←SJC

SECTION SJC→4.←SJC SJC→5.←SJC EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.